**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.2094 OF 2006**

1. Shri Panalal s/o Parasram Singh
and ors., . Petitioners

Vs

1. Shri Ramkrishnasingh Parasram Singh
& ors. Respondents.

Mr D.J.Deshmukh, for the petitioners.
Ms M.M.Malar, for respondent no.1.
Mr A.J.Bhor, for respondent no.6.

**CORAM : D.B.BHOSALE,J.**
**DATE : 22.08.2006**
**PC:**

1. Heard the learned counsel for the parties.

2. The petitioners have impugned the order dated 27.1.2006 passed by the trial court dismissing the Chamber Summons taken out by the petitioners-plaintiffs seeking amendment of the pleadings. The relevant prayer in the Chamber Summons reads thus:

> "A) The Hon'ble Court may be pleased to allow the plaintiffs to add "as per the Yadadasht Nama (family arrangement) dt.18.5.1975" after the word "the tenancy has been inherited jointly by the plaintiff and defendant nos 1 to 5" in line no.6 para 5 of the plaint."

Except the aforestated amendment, the petitioners are

not seeking any other amendment of the Plaint. Ms.Malar, learned counsel for the respondents, opposed the prayer on two grounds; firstly, at no point of time this document dated 18.5.1975 had been referred to by the plaintiffs in these proceedings, and secondly, the signature of defendant no.1 on the said document is forged. The plaintiffs have filed the suit for a declaration that they along with defendant nos 1 to 5 have inherited the joint tenancy in the suit premises and in support thereof they desire to rely upon the document dated 18.5.1975 which, according to the plaintiffs, was signed by all the members of the family. The plaintiffs and the defendants are the members of one and the same family. The defendant no.1 has denied the rights of the plaintiffs in the suit premises as tenants. The evidence in the instant case is yet to begin. The learned trial Court has rejected the application holding that the plaintiffs are trying to make out a new case without producing on record the relevant document. The stage of producing the document is yet to come. It is now well settled that all amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. In

the present case, the amendment is not opposed on the ground that the amendment has any adverse effect on the defence taken by defendants. The controversy in the suit is to the effect as to whether the plaintiffs and defendant nos 1 to 5 have inherited the tenancy rights in the property after the death of their father, i.e. the original tenant, who died in 1974. In my opinion no prejudice whatsoever will be caused to the defendants if such an amendment is allowed. It is always open for the defendants to raise all contentions including denying his signature on the said document by filing additional written statement. Allowing the amendment does not mean that the contents of the said document are accepted. In the circumstances, this petition is allowed. The petitioners-plaitiffs are directed to carry out the amendment within two weeks from the date of receipt of this order. It is open for the respondents-defendants to file additional written statement, if they so desire within four weeks therefrom. Hearing of the suit is expedited. The writ petition is disposed of.

(D.B.BHOSALE,J.)